

JOHN J. TECKLENBURG  
MAYOR

*City of Charleston*  
*South Carolina*  
*Clerk of Council Department*

VANESSA TURNER MAYBANK  
CLERK OF COUNCIL

**NOTICE OF MEETING**

A meeting of the Committee on Real Estate will be held beginning at 11:00 a.m., November 9, 2016, at City Hall, 80 Broad Street. The agenda will be as follows:

**AGENDA**

Invocation – Chairman White

**Approval of Minutes:** October 25, 2016

- a. Approve a Second Amendment to a Memorandum of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") requiring the EDCHDO to return to the City 4 properties as listed while retaining 2 properties, 83 Hanover and 32 Nassau, for redevelopment (87 Cooper Street, 26 Reid Street, 4 Grants Court, 4 Nunan Street) The owner of this property is EDCHDO.
- b. Request authorization from the Mayor to execute the attached lease agreement between the City and the Gaillard Management Corporation (2 George Street; TMS: 458-01-01-001). The owner of this property is the City of Charleston. [Ordinance]
- c. Request authorization of the Mayor to execute the attached license agreement between the City and the United States Coast Guard for the City's temporary use of their property (196 Tradd Street; TMS: 457-07-03-001) The owner of this property is the U.S. Coast Guard.

a.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: John T. Tecklenburg, Mayor DATE: October 31, 2016

FROM: Geona Shaw Johnson DEPT: Housing and Community Development

ADDRESS: 87 Cooper Street, 26 Reid Street, 4 Grants Court, 4 Nunan Street

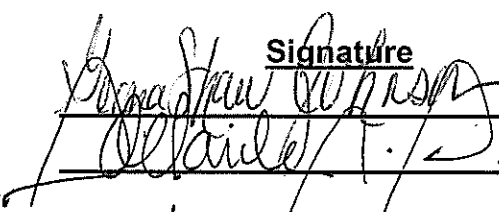
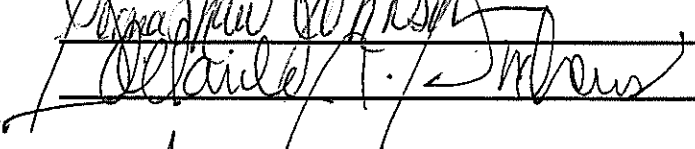
TMS: \_\_\_\_\_

Approve a Second Amendment to a Memorandum of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") requiring the EDCHDO to return to the City 4 properties as listed above while retaining

ACTION REQUEST: 2 properties, 83 Hanover and 32 Nassau, for redevelopment.

**COORDINATION:** The request has been coordinated with:

*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	<u></u>	<input checked="" type="checkbox"/>
Legal Dept	<u></u>	<input checked="" type="checkbox"/>
Property Coordinator	_____	<input type="checkbox"/>
Property Manager	<u>Amy Wharton</u>	<input type="checkbox"/>
Real Estate Director	<u>Colleen Carducci</u>	<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☒ No ☐

If yes, was funding previously approved? Yes ☒ No ☐

\*If approved, provide the following: Dept/Div. 453005 Acct: 54027

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00A.M. THE DAY OF THE CLERK'S AGENDA MEETING.**

\*Commercial Property and Community & Housing Development have an additional form.

## COMMERCIALREAL ESTATE FORM

TO: Real Estate Committee DATE: October 31, 2016

FROM: Geona Shaw Johnson DEPT: Housing and Community Development

ADDRESS: 87 Cooper Street, 26 Reid Street, 4 Grants Court, 4 Nunan Street

TMS: \_\_\_\_\_

Approve a Second Amendment to a Memorandum of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") requiring the EDCHDO to return to the City 4 properties as listed above while retaining 2 properties, 83 Hanover and 32 Nassau, for redevelopment.

ACTION REQUEST: 2 properties, 83 Hanover and 32 Nassau, for redevelopment.

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### ACTION: What action is being taken on the Property mentioned?

☐ **ACQUISITION BY**

☐ **DONATION/TRANSFER**

Donated By: \_\_\_\_\_

☐ **FORECLOSURE**

Terms: \_\_\_\_\_

☐ **PURCHASE**

Terms: \_\_\_\_\_

☐ **CONDEMNATION**

Terms: \_\_\_\_\_

☐ **OTHER**

Terms: \_\_\_\_\_

☐ **SALE BY**

☐ **NON-PROFIT ORG, please name** \_\_\_\_\_

Terms: \_\_\_\_\_

☒ **OTHER**

Reconveyance of 87 Cooper Street, 26 Reid Street, 4 Grants Court and 4 Nunan Street in the City and County of Charleston, State of South Carolina, by the EDCHDO to the City of Charleston. EDCHDO will retain ownership of 32 Nassau Street and 83 Hanover Street for redevelopment as affordable housing units in accordance with the Second Amendment of the MOU.

Terms: \_\_\_\_\_

☐ **LEASE**

## COMMERCIALREAL ESTATE FORM

☐

INITIAL

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

Terms: \_\_\_\_\_

☐

RENEWAL

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

Terms: \_\_\_\_\_

☐

AMENDMENT

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

Terms: \_\_\_\_\_

☐

Improvement of Property

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

\_\_\_\_\_

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**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

Property Manager

**ADDITIONAL :** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

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**NEED:** Identify any critical time constraint(s).

STATE OF SOUTH CAROLINA     )  
                                      )  
COUNTY OF CHARLESTON      )

SECOND AMENDMENT  
TO  
MEMORANDUM OF UNDERSTANDING

This Second Amendment to the Memorandum of Understanding is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") this \_\_\_\_ day of November, 2016.

WHEREAS, the City and EDCHDO previously entered into a Memorandum of Understanding dated September 26, 2006 ("MOU") which was amended on July 19, 2011 ("MOU Amendment"); and

WHEREAS, the City and EDCHDO desire to further amend the MOU, as amended by the MOU Amendment, in order to revise certain provisions therein as hereinafter provided.

NOW, THEREFORE, in consideration of the benefits flowing from this Second Amendment to the MOU, as amended by the MOU Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The MOU, as amended by the MOU Amendment, is hereby amended as follows:
  - a. Upon the execution of this Second Amendment, EDCHDO shall relinquish its interest in the following properties located in the City and County of Charleston, State of South Carolina and re-convey same to the City free and clear of all liens and encumbrances:
    - i. 4 Nunan Street;
    - ii. 4 Grants Court;
    - iii. 87 Cooper Street; and
    - iv. 26 Reid Street.
  - b. EDCHDO shall:
    - i. Retain ownership of 32 Nassau Street and 83 Hanover Street located in the City and County of Charleston, State of South Carolina (“Retained Properties” or “Retained Property”); and
    - ii. Complete construction of the affordable housing units on the Retained Properties, as evidenced by certificates of occupancy issued thereon by the City of Charleston (“Affordable Housing Units”), and sell the Retained Properties in accordance with the MOU, as amended by the MOU Amendment, no later than December 31, 2017 (“1<sup>st</sup> Extension Date”).
  - c. If EDCHDO completes construction of the Retained Properties in accordance with Section 1.b above but is unable to sell one or all of the Retained Properties by the 1<sup>st</sup> Extension Date a/k/a December 31, 2017, EDCHDO shall receive one (1) additional extension of time until April 30, 2018 to sell the unsold Retained Properties or Retained Property (“2<sup>nd</sup> Extension Date”).

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the Memorandum of Understanding as of the date first written above and after due authorization by the City of Charleston City Council.

WITNESSES:

Episcopal Diocese of South Carolina Community Housing  
Development Organization

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: Chairman, William Schandall

WITNESSES:

The City of Charleston

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: Mayor, John J. Tecklenburg

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*City of Charleston*  
*Legal Department*

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bordenj@charleston-sc.gov

August 8, 2011

Elizabeth Scott Moise, Esq.  
Nelson Mullins Riley & Scarborough LLP  
Liberty Center, Suite 600  
151 Meeting Street  
Charleston, SC 29401-2239

Re: Amendment to MOU with City of Charleston and EDCHDO  
And Letter of Clarification to Sections 2(f) and 3(g) of the MOU Amendment

Dear Scott:

Enclosed please find 3 originals of the above-referenced MOU Amendment which was approved by City Council at its meeting last Tuesday. At your earliest opportunity, please have your client, 2 witnesses and 1 notary public sign the enclosed 3 original documents on the lines provided, and return them to me for execution by the Mayor.

By way of clarification, please accept this letter as a clarification to the following sections of the MOU Amendment which shall read as follows:

1. "Section 2(f) – With the exception of the City's permanent subsidies as described in Section 1(d)(iv) above, the parties shall not be responsible for any additional subsidies for the properties that are developed pursuant to this MOU. The parties understand that the Funds described in Sections 1(a) and 1(b) may not be sufficient to construct and sell all the properties listed in Section 1(d)(iii). To the extent the Funds are insufficient to cover the cost to construct

the properties described herein and subsidize the properties after their completion, the parties agree that they will work together in good faith to:

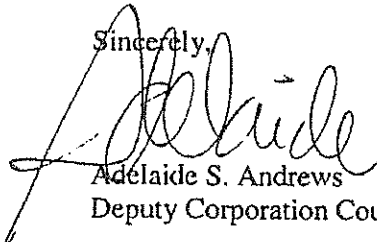
- (1) partner in the permitting process for their construction and/or rehabilitation; and
- (2) secure funding to cover any subsidy or construction cost shortfalls.

2. Section 3(g) – The parties agree that all obligations concerning the properties more fully set forth in Section 1(d)(i) shall revert to the City and that examples of such obligations in Section 3(g) herein are not intended to limit the obligations that revert, but that such obligations are used as examples only.”

I would appreciate your client concurring with the clarifications contained in this letter and its duplicate by signing on the lines at the bottom of the letter and its duplicate where indicated. Once you have returned the executed duplicate letter and 3 original MOU Amendments to me, I will get them signed by the Mayor and return 1 original of both documents to you for your client's records. Once we are able to finalize all signatures on these documents, please have your closing attorney contact me with a closing date for the 8 properties to be conveyed to the EDCHDO and the payment of \$800,000 by the City in accordance with the terms of the MOU Amendment.

Thank you again for your cooperation and assistance in this matter.

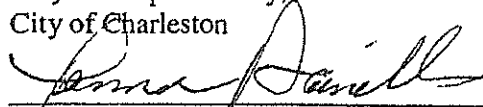
Sincerely,

  
Adelaide S. Andrews  
Deputy Corporation Counsel

/ASA  
Enclosures

We concur with the clarification of Section 2(f) and Section 3(g) of the MOU Amendment between the City of Charleston and the EDCHDO as set forth above.

\_\_\_\_\_  
Mayor Joseph P. Riley, Jr.  
City of Charleston

  
Lonnie Hamilton, III, Chairman  
EDCHDO

8-12-2011

*Travene H. Robinson  
Notary Public for SC  
My Commission Expires 8.12.20  
As to Lonnie Hamilton III Mayor.*



**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Joseph P. Riley, Jr., Mayor DATE: June 21, 2011

FROM: Adelaide S. Andrews DEPT: Legal

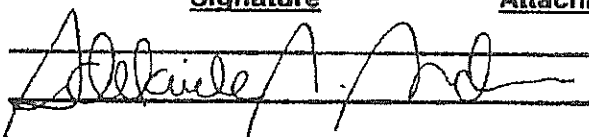
ADDRESS: Various Properties in Charleston, SC

TMS: \_\_\_\_\_

Approve an Amendment to a Memorandum of Understanding  
between the City of Charleston and the Episcopal Diocese of  
South Carolina Community Housing Development Organization  
("EDCHDO")

ACTION REQUEST: \_\_\_\_\_

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head		<input checked="" type="checkbox"/>
Legal Dept		<input checked="" type="checkbox"/>
Property Coordinator		<input type="checkbox"/>
Property Manager		<input type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved? Yes ☐ No ☐

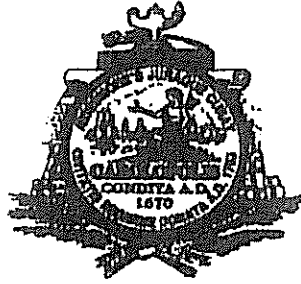
\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**ORIGINATING OFFICE PLEASE NOTE:** A FULLY STAFFED/APPROVED  
PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN  
10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

\*Commercial Property and Community & Housing Development have an  
additional form.



Ratification  
Number

2011-54

## AN ORDINANCE

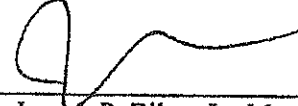
AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON AND THE EPISCOPAL DIOCESE OF SOUTH CAROLINA COMMUNITY HOUSING DEVELOPMENT ORGANIZATION ("EDCHDO") FOR THE CONVEYANCE OF CERTAIN PROPERTIES TO THE EDCHDO WHICH ARE SITUATE, LYING AND BEING IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, SAID AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BEING MARKED AS EXHIBIT I, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN (AS AMENDED).

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

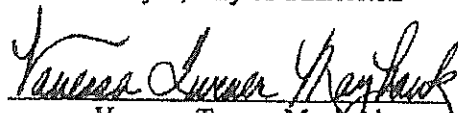
**Section 1.** The Mayor is hereby authorized to execute the necessary documents to enter into that certain Amendment to the Memorandum of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") which includes the conveyance of certain properties to the EDCHDO which are situate, lying and being in the City and County of Charleston, State of South Carolina, said Amendment to the Memorandum of Understanding being marked as Exhibit I, attached hereto and incorporated by reference herein.

**Section 2.** This Ordinance shall become effective upon ratification.

Ratified in City Council this 19<sup>th</sup>  
day of July in the year of  
Our Lord, 2011, in the 236th Year of  
the Independence of the United States  
of America.



Joseph P. Riley, Jr., Mayor  
Mayor, City of Charleston



Vanessa Turner-Maybank  
Clerk of Council

ATTEST:

AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING

This Amendment to the Memorandum of Understanding is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") this \_\_\_\_ day of July, 2011.

WHEREAS, the City and the EDCHDO previously entered into a Memorandum of Understanding dated September 26, 2006 ("MOU"), wherein EDCHDO was granted certain rights to develop, *inter alia*, affordable housing unitson properties owned by the City more fully described in Section 1(d)(i) of the MOU and located in the City and County of Charleston, State of South Carolina; and,

WHEREAS, the City and EDCHDO have come to realize that a more advantageous agreement can be structured with respect to the affordable housing units to be developed on certain properties owned by the City more fully described herein and are minded to enter into this Amendment to the MOU in order to modify Section 1(d)(i) of the MOU and create a new Section 2 to identify the properties that the City shall convey to the EDCHDO for the construction of eight (8) affordable housing units and to modify Section 1(a) and create a new Section 2 of the MOU to establish the City's funding commitments to the EDCHDO for the cost of constructing and subsidizing such affordable housing units on the properties owned by the City to be conveyed to the EDCHDO more fully set forth in Section 1(d)(i) and Section 2 in accordance with this Amendment to the MOU, said properties being located in the City and County of Charleston, State of South Carolina.

NOW, THEREFORE, in consideration of the benefits flowing from this Amendment to the MOU and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The MOU is hereby amended by deleting Section 1(a) in its entirety and substituting in its place and stead the following Section 1(a), which shall read as follows:

"1(a). Transfer of the sum of \$500,000 plus accrued interest from the Morris Square Developers and \$300,000 from Parcel B funds to the EDCHDO at the closing of the eight (8) properties more fully described in Section 1(d)(i) herein, said closing to occur no later than 30 days from the execution of this Amendment to the MOU by the parties."

2. The MOU is further amended by deleting Sections 1(c), 1(c)(i) and 1(c)(ii) in their entirety and substituting in their place and stead the following Sections 1(c), 1(c)(i) and 1(c)(ii), which shall read as follows:

"1(c). The funds described in Paragraphs 1(a) and 1(b), together with any other funds now or hereafter made available by the City to the EDCHDO for the purposes set forth in Subparagraphs (i) and (ii) below, shall be referred to collectively herein as the "Funds." Subject to the remaining terms of this MOU, as amended, the Funds shall be used as follows:

- (i) To provide permanent subsidies for the affordable housing units developed in accordance with this MOU, as amended, and;

(ii) To pay construction costs, including architectural, engineering and legal expenses associated with EDCHDO's development of the affordable housing in accordance with this MOU, as amended."

3. The MOU is further amended by deleting Section 1(d)(i) in its entirety and substituting in its place and stead the following Section 1(d)(i) which shall read as follows:

"Section 1(d)(i). 87 Cooper Street, 83 Hanover Street, 32 Nassau Street, 176 Fishburne Street, 475 Race Street, 4 Nunan Street, 4 Grants Court; and 26 Reid Street situate, lying and being in the City and County of Charleston, State of South Carolina."

4. The MOU is further amended by deleting Section 1(d)(iii) in its entirety and substituting in its place and stead the following Section 1(d)(iii), which shall read as follows:

"Section 1(d)(iii). The properties listed in 1(d)(i) above shall be transferred to the EDCHDO within thirty (30) days of the execution of this Amendment to the MOU by the parties at the real estate closing for the conveyance of the properties listed in Section 1(d)(i) above; provided that the parties anticipate that the properties shall be completed and sold no later than September 30, 2016. Upon the completion and sale of any of the affordable housing units on the properties described in Section 1(d)(i), the EDCHDO shall be entitled to receive a development fee in the sum of 10% of the EDCHDO's cost to construct the affordable housing unit, including the architectural, engineering, contractor, permitting and related costs incurred by the EDCHDO to complete such unit and obtain a certificate of occupancy therefor (the "Development Fee"). The EDCHDO shall be entitled to receive the Development Fee from the first-time homebuyer of the property at the closing of such unit. "

5. The MOU is further amended by renumbering Sections 2, 3, 4, 5, 6, 7, 8 and 9 to Section 3, 4, 5, 6, 7, 8, 9 and 10.

6. The MOU is further amended by creating a new Section 2, which shall read as follows:

"Section 2. The City shall pay the EDCHDO the sum of \$100,000 from CDBG funds payable in two (2) annual installments of \$50,000 each, the first installment being due on or before September 30, 2013 and the second installment being due one (1) year after the payment of the first annual installment on September 30, 2014. These funds shall also be used by the EDCHO in accordance with Section 1(c)(i) and Section 1(c)(ii) herein."

7. The MOU is further amended by adding a new Section 3(g) (formerly Section 2) which shall read as follows:

"Section 3(g). Notwithstanding the foregoing, in the event that the EDCHDO is unable to sell any of the eight (8) affordable housing units as set forth in Section 1(d)(i) by September 30, 2016, title to such units or land shall revert to the City and all obligations for the sale of such unsold or incomplete units, including the payment of *ad valorem* taxes and insurance on such units due on or after September 30, 2016, shall also revert to the City. Any amount of the Funds that have not been expended by the EDCHDO for the eight (8) affordable

housing units that are not completed and/or sold by September 30, 2016, shall also revert to the City as set forth herein; provided that any property that reverts to the City in accordance with this Section 3(g) that has received its certificate of occupancy prior to the occurrence of the reverter as set forth herein and is subsequently sold by the City shall be subject to the payment of the Development Fee as defined in Section 1(d)(iii) herein to the EDCHDO from the first-time homebuyer of the property at the closing of such unit. "

In all other respects, the MOU entered into by and between the City and the EDCHDO remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Memorandum of Understanding as of the date first written above and after due authorization by the City of Charleston City Council.

WITNESSES:

Episcopal Diocese of South Carolina Community Housing  
Development Organization

*Yind Hitchman* By: *James Hamilton* 8-12-2011  
*Anthony Hamilton* Its: Chairman, Lonnie Hamilton, III

*Rita Doras*  
*Charm Willett*

The City of Charleston

By: *[Signature]*  
Its: Mayor, Joseph P. Riley, Jr.

*Oranceine H. Razman*  
*Notary Public of SC*  
*My Commission Expires 8/12/20*  
*As to Lonnie Hamilton, III Only*

EXHIBIT I

STATE OF SOUTH CAROLINA    )  
  )    MEMORANDUM OF UNDERSTANDING  
COUNTY OF CHARLESTON        )

This Memorandum of Understanding is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") this 24<sup>th</sup> day of September, 2006.

WHEREAS, the City of Charleston ("City") and Civitas, LLC previously entered into a Memorandum of Understanding dated March 25, 2003, and thereafter amended on September 28, 2004 (the "Morris Square MOU") which provided for, *inter alia*, the development of six (6) affordable housing units by Civitas, LLC for the City at Morris Square, a residential development on Morris Street in the City and County of Charleston, State of South Carolina; and

WHEREAS, Smith Morris Company, LLC is the successor of Civitas, LLC and Smith Morris is now the developer of Morris Square (the "Developer"); and

WHEREAS, the City and Developer have come to realize that a more advantageous agreement can be structured with respect to the six (6) affordable housing units to be built in Morris Square by virtue of Developer: (1) being able to sell such units at market rates and in exchange therefor, transferring the net sales proceeds therefrom, which are expected to generate a guaranteed minimum of \$900,000, to the City in order to create a funding source for the development of a significantly greater number of affordable housing units in the City of Charleston; and

WHEREAS, as additional consideration for the proposed Second Amendment to the Morris Square MOU, Developer has agreed to provide to the City title to three (3) home sites in the Phase II section of the Morris Square development and final construction documents and all necessary permits for the construction of such affordable housing units in the Phase II section of the Morris Square development; and

WHEREAS, the City and Developer are minded to enter into a Second Amendment to the Morris Square MOU in order to realize this opportunity; and

WHEREAS, prior to approval of the Second Amendment to the Morris Square MOU, the City is minded to enter into this Memorandum of Understanding with EDCHDO in order to designate EDCHDO as the non-profit organization to develop the three (3) affordable housing units in the Phase II section of the Morris Square development and to receive the net proceeds from the sale of the six (6) market rate units, three (3) in Phase I and three (3) in Phase II of the Morris Square development in accordance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the benefits flowing from the Second Amendment to the Morris Square MOU and for other good and valuable consideration,

the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Obligations of City, subject to the satisfaction of the contingencies and other requirements and conditions contained herein:

(a) Transfer of Net Proceeds from the sale of six (6) units in the Morris Square development in accordance with the Second Amendment to the Morris Square MOU. Net Proceeds shall be defined as the gross sales price, less commissions and closing costs, and less hard construction costs (including construction interest and bank loan fees); provided that all soft costs, including architectural engineering and design fees for the six (6) units shall be paid by Developer and Developer shall not be entitled to any credit or reimbursement therefore. Developer has agreed to guarantee that the net proceeds from the sale of the six (6) units shall be at least Nine Hundred Thousand and no/100 (\$900,000.00) Dollars, although Developer anticipates that the Net Proceeds shall be approximately \$980,000.00. Upon receipt by the City of any Net Proceeds from the sale of the six (6) market rate units, three (3) in Phase I and three (3) in Phase II, in the Morris Square development, the City shall transfer such proceeds to the EDCHDO.

(b) Transfer from the City to the EDCHDO, within ninety (90) days of the effective date hereof, of certain Charleston Housing Trust funds totaling One Hundred Ninety Six Thousand and No/100 Dollars (\$196,000.00).

(c) The funds described in Paragraphs 1(a) and 1(b), together with any other funds now or hereafter made available by the City to the EDCHDO for the purposes set forth in subparagraphs (i) and (ii) below, shall be referred to collectively herein as the "Funds." Subject to the remaining terms of this MOU, the Funds shall be used as follows:

(i) To provide permanent subsidies for the affordable housing units developed in accordance with this MOU;

(ii) To pay construction costs, including architectural, engineering and legal expenses associated with EDCHDO's development of the affordable housing in accordance with this MOU.

(d) Convey to EDCHDO the following properties on which affordable housing units shall be constructed or renovated, as applicable:

(i) 9 Sheppard Street, 56 South Street, 87 Cooper Street, 85 Hanover Street, 30.5 and 32 Nassau Street, 2323 Birdie Garrett Lane, 2311 Odessa Street, 2310 Peonie Street, 1903 Doscher Street, 475 Race Street, 176 Fishburne Street, 10



Larnes Street and 188.5 Line Street, all of which are located in the City and County of Charleston, State of South Carolina.

- (ii) The properties listed in 1(d)(i) above shall be developed in accordance with the terms and conditions of this MOU and the City's Transfer and Development Agreements used for the development of first-time home ownership affordable housing units under the City's Homeownership Initiative program.
- (iii) The properties listed in 1(d)(i) above shall be transferred to the EDCHDO on a timeline as agreed upon by the parties; provided that the parties anticipate the properties shall be completed by the end of 2012.
- (iv) The City shall require that a note and mortgage in the amount of the City's land acquisition costs for each property listed in 1(d)(i) shall be executed by EDCHDO upon the transfer of such properties to EDCHDO. It is the intention of the parties that the notes and mortgages required pursuant to this section shall remain as permanent subsidies in the properties upon their sale to first-time home buyers and shall be subordinated in favor of the first-time home buyer's permanent lender.

2. Obligations of EDCHDO, subject to the satisfaction of the contingencies and other requirements and conditions contained herein:

- (a) Upon receipt of all or any portion of the Funds in accordance with Section 1(a) and 1(b) above, EDCHDO shall deposit such Funds in an interest-bearing account to be held in trust and separate from any other funds of EDCHDO. EDCHDO shall use the Funds in accordance with the provisions of Section 1(c)(i) and (ii) above.
- (b) EDCHDO shall make all records related to the Funds, including banking records, available to the City for inspection upon request during normal business hours. At least quarterly, EDCHDO shall provide to the City unaudited financial reports of the Funds. On an annual basis, EDCHDO shall provide the City with audited financial reports with respect to all activity of the Funds for that given year. EDCHDO agrees that the City, HUD and any other entity having jurisdiction over the Funds shall have the right to inspect and audit its records with respect to the Funds at reasonable times upon request.

- (c) Develop the properties listed in 1(d)(1) above and the three (3) units in the Phase II portion of the Morris Square development as first-time homeownership affordable housing units in accordance with the City's Transfer and Development Agreements, the attached Restrictive Covenants marked as Exhibit A, attached hereto and incorporated by reference herein, and all other requirements of the City's Homeownership Initiative program, as same may be hereafter amended from time to time. It is expressly understood that EDCHDO shall not be responsible for taxes, insurance or maintenance of the properties listed in 1(d)(1) above until such time as title to said property is conveyed to the EDCHDO in accordance with the Transfer and Development Agreement.
- (d) Market and sell the properties listed in 1(d)(1) and the three (3) units in the Phase II portion of the Morris Square development in accordance with the requirements of the City's Homeownership Initiative program.
- (e) To the extent that any of the Funds are remaining after the completion of EDCHDO's obligations set forth above, EDCHDO agrees to use the balance of the Funds for the development of affordable housing units in the City of Charleston.
- (f) With the exception of the City's permanent subsidies as described in Section 1(d)(iv) above, the parties shall not be responsible for any additional subsidies for the properties that are developed pursuant to this MOU. To the extent the Funds are insufficient to cover to cost to construct the properties described herein and subsidize the properties after their completion, the parties agree that they will work together in good faith to: (1) partner in the permitting process for their rehabilitation; and (2) secure funding to cover any subsidy or construction cost shortfalls.

3. Contingencies. The obligations of the City and EDCHDO hereunder are contingent upon the requirements and contingencies being satisfied by Developer in the Second Amendment to the Morris Square MOU, marked as Exhibit B, attached hereto and incorporated by reference herein.

4. Assignment. This Memorandum of Understanding shall not be assigned or otherwise transferred by either party without the other party's prior written consent.

5. Closing Costs and Property Taxes. In the event EDCHDO receives title to the properties listed in Section 1(d)(i) above, EDCHDO agrees to pay its own legal expenses and all closing costs in connection to any conveyance contemplated herein,

including deed preparation costs, deed stamps, deed recording fees, the cost of obtaining and recording of any releases of any nature and survey costs. All property taxes (if any) on the property contemplated to being conveyed shall be the responsibility of EDCHDO, provided however, that any payment made by the EDCHDO in accordance with this Section 5 may be paid from the Funds.

6. Brokerage Commission. The City and EDCHDO represent to each other than no other entity is entitled, as a result of the action of the representing party, to a real estate commission or other fee resulting from the execution of this MOU or the conveyances contemplated herein.

7. Notices. Any notice, demand, request or other correspondence (a "notice") required or permitted to be given hereunder shall be in writing and shall be deemed delivered when either (i) personally delivered, (ii) sent by US Certified or Registered Mail, return receipt requested, postage prepaid, or (iii) delivered, costs prepaid, by any reputable delivery service that provides written confirmation of delivery. Notice shall be given at the following addresses:

To City:                   The City of Charleston  
                                PO Box 304  
                                (Delivery) 50 Broad Street  
                                Charleston, SC 29402  
                                Fax: 843.724.3706  
                                Attention: Legal Department

To EDCHDO:           EDCHDO  
                                c/o Calvary Episcopal Church  
                                Charleston, SC 29403  
                                Fax: \_\_\_\_\_  
                                Attention: \_\_\_\_\_

8. Default and Remedies.

(a) Events of Default. It shall be an Event of Default if a party shall fail to perform or observe any provision or condition to be performed or observed by such party under this MOU and shall fail to cure the default within seven (7) days after receipt of notice of the default from the non-defaulting party (or such additional time as may be expressly authorized in writing by the non-defaulting party).

(b) Remedies. If there is an uncured Event of Default, the non-defaulting party shall have the right to pursue any remedies available at law or in equity, including the right of specific performance. In any action at law or in equity to enforce any provision of this MOU, the prevailing party shall be entitled to recover all costs of such

action, including reasonable attorney's fees and expenses through any final appeal from the non-prevailing party.

9. Miscellaneous.

(a) Other Understandings. This MOU contains all of the terms and conditions agreed to between the parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction covered hereby. This MOU cannot be altered, amended, changed or modified unless each such alteration, amendment, change or modification shall have been set forth in writing in its entirety and signed and delivered by each party.

(b) Successors and Assigns. This MOU shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Cooperation and Other Documents. The parties shall act in good faith in performing and discharging their respective duties and obligations hereunder. The parties hereto shall execute and deliver such other and further instruments, documents and applications for permits and approvals as reasonably may be necessary to implement and effectuate the terms of this MOU.

(d) Applicable Law. This MOU has been made in the State of South of South Carolina, and shall be interpreted in accordance with South Carolina law, and any enforcement of this Agreement shall be brought in the County of Charleston, State of South Carolina.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 26<sup>th</sup> day of September, 2006.

WITNESSES:

Episcopal Diocese of South Carolina  
Community Housing Development  
Organization

[Signature]  
Harriet H. Pender

By: [Signature]  
Its: Chairman

City of Charleston

[Signature]  
Maria L. Trent

By: [Signature]  
Its: Mayor

## **EXHIBIT A**

(City's HI Restrictive Covenants)

### **Single Family Affordable Housing Restrictive Covenants**

#### **City of Charleston**

1.0. **Covenant and Purpose.** The Property shall be conveyed subject to the conditions, covenants, restrictions and limitations set forth below (collectively, the "Restrictive Covenants"). The Restrictive Covenants shall be considered as covenants running with the land, and shall be binding on the Developer, its heirs, successors and assigns, together with all successors in title to the Property (the Developer, its heirs, successors and assigns, together with all successors in title to the Property, being collectively referred to herein as the "Owner"). Each Owner covenants and agrees, in the event the Property is sold, conveyed or otherwise disposed of, the Property shall be sold subject to these Restrictive Covenants and that the recording information for this deed shall be inserted in the deed of conveyance or other instrument disposing of the Property.

2.0. **Definitions.** As used in these covenants, conditions, and restrictions the following terms shall have the meaning set forth:

2.1. **"Area Median Income"** shall mean and have reference to the median family income, based upon applicable family size of a Qualified Purchaser (or of a Qualified Renter, if applicable), for the Charleston-North Charleston metropolitan statistical area as published by the United States Department of Housing and Urban Development. If the United States Department of Housing and Urban Development should no longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining Area Median Income.

2.2. **"Base AMI"** shall mean the Area Median Income for a family of four persons as of the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base AMI for this deed is \$\_\_\_\_\_.

2.3 **"Base Purchase Price"** shall mean the Purchase Price paid to the Developer by the first Qualified Purchaser of the Property. The Base Purchase Price for this deed is \$\_\_\_\_\_.

2.4 "AMI Increase" shall mean the Area Median Income for a family of four persons at the date of calculation divided by the Base AMI. By way of example only and solely for purposes of illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the Area Median Income for a family of four persons were \$39,400 in July, 2002 (the "Base AMI" for purposes of this illustration only) and if the Area Median Income for a family of four persons were \$43,340 in September, 2005 when an Owner proposed to sell the Property, the AMI Increase would be \$43,340 divided by \$39,400 or 1.10.

2.5. "City" shall mean and have reference to the City of Charleston, South Carolina or such other municipality that has geographic jurisdiction over Daniel Island.

2.6. "Developer" shall mean and have reference to \_\_\_\_\_.

2.7. "Qualified Purchaser" shall mean and have reference to a proposed purchaser of the Property whose income is between fifty percent (50%) and one hundred and twenty percent (120%) of Area Median Income as of the anticipated date of purchase of the Property by the Qualified Purchaser and who is certified in writing by the City as having the requisite income.

2.8. "Owner" shall mean and have reference to, at any particular point in time, the owner in fee simple of the Property. The Owner shall initially be the Grantee, and shall subsequently be the Grantee's heirs, devisees, successors and assigns, as owners in fee simple of the Property. Owner shall include any party that acquires fee simple ownership of the property by virtue of foreclosure of mortgage or deed of trust conveying the Property as security for an obligation or any transfer in lieu of such foreclosure.

2.9. "Property" shall mean and have reference to that certain tract or parcel of land conveyed by this deed, together with all improvements, fixtures and equipment located thereon.

2.10. "Resale Price" shall mean and have reference to an amount determined as the product of the Base Purchase Price multiplied by the AMI Increase, or such higher amount as may be determined in accordance with Section 5 herein. By way of example and solely for purposes of illustration, if the Base Purchase Price were \$140,000 (solely for purposes of this illustration only) when the Developer transferred the Property to the first Qualified Purchaser in July, 2002 and the AMI Increase were 1.10 at the time of a proposed sale in September, 2005, the Resale Price would be \$140,000 times 1.10 or \$154,000.

2.11 "City Subsidy" shall mean \$ \_\_\_\_\_.

2.12 "City Subsidy Percentage" shall mean the City Subsidy divided by the Base Purchase Price. By way of example only and solely for purposes of

illustration, if the Base Purchase Price were \$150,000 and the City Subsidy were \$45,000, the City Subsidy Percentage would be \$45,000 divided by \$150,000 or 30%.

2.13 "Lien Limitation Percentage" shall mean 100% minus the City Subsidy Percentage. By way of example only and solely for purposes of illustration, if the City Subsidy Percentage were 30%, the Lien Limitation Percentage would be 70%.

2.14 "Lien Limit" shall mean the amount that equal the Lien Limitation Percentage times the Resale Price as calculated at the time of recordation of the mortgage.

2.15 "Adjusted City Subsidy" shall mean the City Subsidy Percentage times the Resale Price.

2.16 "Non-City Share of the Resale: Price" shall mean the Resale Price minus the Adjusted City Subsidy.

2.17 "Default Option Price" shall mean 80% of the Resale Price.

2.18 "Option Term" shall mean 90 years from the date of the deed from the Developer to the first Qualified Purchaser. All provisions relating to the City's Right of First Refusal and the City's right to purchase the Property for the Default Option Price shall automatically terminate upon the expiration of the Option Term. If the South Carolina Uniform Statutory Rule Against Perpetuities (Section 27-6-10 et seq., Code of Laws Of South Carolina, 1976, as amended) is amended, the Option Term shall automatically be modified to the longest period authorized by South Carolina law.

2.19 "Qualified Renter" shall mean and have reference to a proposed renter of the Property whose income is does not exceed eighty percent (80%) of Area Median Income and who is certified by the City as having the requisite income.

2.20 "Qualified Rent" shall mean the monthly rent approved by the City as affordable rent in accordance with applicable federal guidelines.

2.21 "Qualified Lease" means a lease form approved by the City for use to a Qualified Renter for a Qualified Rent. The lease must be for a term approved by the City and must include periodic recertification by the City of the income of the tenant, if the lease is for more than 12 months.

2.22 "City Transfer Certificate" shall mean the written certification to be provided by the City in connection with each transfer of the Property and each granting of a mortgage on the Property. In the event of a transfer, the City Certificate shall be in a recordable form and shall state the maximum Resale Price, the names of the approved Qualified Purchasers, the amount of the Adjusted City Subsidy, the amount of the Non-City Share of the Resale Price and the City's waiver of its right of first refusal. In the event of a mortgage, the City Certificate shall be in a



recordable form and shall state the amount of the Resale Price as of the date of the mortgage, the Lien Limit Percentage, the Lien Limit, the City Subsidy Percentage, the Adjusted City Subsidy as of the date of the mortgage, together with a written acknowledgement by the City that the new mortgage does not exceed the Lien Limit. In the event that the City has given a one time waiver of any requirements in accordance with the procedures set forth in these Restrictive Covenants, the City Transfer Certificate shall set forth the existence and terms of such waiver.

3.0 City Subsidy The City has made an investment in the Property equal to the City Subsidy and the City has agreed that each successive Owner of the Property shall have the benefit of the Adjusted City Subsidy for so long as these Restrictive Covenants remain in effect.

3.1 City's Equitable Interest in the Property Each Owner covenants and agrees that the City has an equitable interest in the Property equal to the Adjusted City Subsidy. Each Owner covenants and agrees that the portion of any Resale Price as equals the Adjusted City Subsidy Amount belongs to the City and that the Owner's interest in the Resale Price is limited to the Non-City Share of the Resale Price. If these Restrictive Covenants are terminated for any reason, the City shall be entitled to receive payment in full of the Adjusted City Subsidy.

3.2 Transfer and Mortgage Procedures All transfers of, and all mortgages on, the Property shall be made in accordance with these Restrictive Covenants.

(A) In the event that an Owner seeks to sell the Property the Owner shall provide written notice of such proposed sale to the City. Such written notice shall request assistance from the City to identify potential Qualified Purchasers and shall request the City to calculate the maximum Resale Price.

(B) Each Owner covenants and agrees that no transfer of the Property shall take place and no mortgage of the Property shall be granted unless it is in conformance with these Restrictive Covenants and unless the City has delivered a City Transfer Certificate.

(C) The Owner and its mortgagees shall not receive in the aggregate more than the Non-City Share of the Resale Price upon the sale of the Property. No Qualified Purchaser shall pay more than the Non-City Share of the Resale Price for the purchase of the Property. By way of example and solely for purposes of illustration, if the Resale Price is \$165,000 and the Adjusted City Subsidy is \$49,500, the Qualifying Purchaser would pay no more than \$115,500 and the maximum amount that would be available to pay closing costs, to satisfy any outstanding liens and to pay the selling Owner would be the Non-City Share of the Resale Price or \$115,500.

3.3 City Lien The City shall have a continuing lien against the Property in the amount of the Adjusted City Subsidy which lien shall survive the foreclosure of any mortgage or other lien on the Property.

4.0. Resale Only to Qualified Purchasers. Each Owner covenants and agrees that the Property shall be sold, transferred and conveyed only to such individual, party, or entity as described in this paragraph.

4.1. Qualified Purchasers The Property shall be conveyed only to Qualified Purchasers who are certified by the City in accordance with subparagraph 4.4 (City Certification) or to such persons, parties or entities who are deemed Qualified Purchasers in accordance with subparagraphs 4.2 (Inheritance), 4.3 (Foreclosure), or 4.5 (City Waiver) of this paragraph or in accordance with Paragraph 6 (City Right of First Refusal).

4.2. Inheritance a transfer that occurs by virtue of the death of an Owner, and testate or intestate administration of the estate of the Owner shall be deemed a transfer to a Qualified Purchaser.

4.3. Foreclosure A transfer that occurs by virtue of foreclosure of a mortgage encumbering the Property or a transfer that occurs by reason of a deed in lieu of foreclosure shall be deemed to be a transfer to a Qualified Purchaser.

4.4. City Certification An Owner shall submit, or cause to be submitted, to the City for certification as a Qualified Purchaser, any proposed purchaser of the Property. An Owner shall sell, transfer and convey the Property only to a purchaser who has been certified by the City as a Qualified Purchaser in the City Transfer Certificate. The City shall not decline, refuse or fail to certify as a Qualified Purchaser any potential purchaser of the Property except on the sole ground that the City is unable to verify that the income of such proposed purchaser is within the income limits required of a Qualified Purchaser.

4.5. City Waiver The City in its sole discretion shall have the right to waive, in its sole discretion, the requirement for a specific purchaser that the purchaser be a Qualified Purchaser. A waiver shall apply to only one transfer and shall not apply to subsequent transfers. Upon receipt of a City Transfer Certificate that contains the written waiver from the City, the specific purchaser shall be deemed to be a Qualified Purchaser.

5. Resale Price. No Owner shall sell, transfer, or convey the Property for an amount in excess of the Resale Price and no Owner shall receive from the sale, transfer or conveyance of the Property proceeds in excess of the Non-City Share of the Resale Price.

5.1. Adjustment to Resale Price The Resale Price may be adjusted to a higher amount if the nature and circumstances of the Owner, and the nature and condition of the Property, warrant such a higher amount so long as such adjusted amount does not preclude the ability to certify a potential purchaser as a Qualified Purchaser. The determination of any such adjustment in the Resale Price shall be in

the sole discretion of the City, which may elect to refuse to adjust the Resale Price for any reason.

**5.2 Documentation of Adjustment** No adjustment in the Resale Price shall be permitted or authorized unless the basis for the adjustment, and the amount of the Resale Price as adjusted, is set forth in the City Transfer Certificate. Such an adjustment to the Resale Price shall apply only for a period of 12 months from the date of the writing and shall not apply to subsequent transfers.

**6. Right of Refusal.** In the event that an Owner shall receive an offer to purchase the Property from a Qualified Purchaser or a person who is deemed to be a Qualified Purchaser pursuant to Section 3 for an amount equal to or less than the Resale Price which is acceptable to the Owner (the "Offer"), the City shall have a right to purchase the Property from the Owner for the price set forth in the Offer (the "Right of First Refusal"). Upon the receipt of an Offer, the Owner shall promptly forward a copy of the Offer to the City. In the event that the City elects to exercise the Right of First Refusal, the City shall give written notice thereof to the Owner within sixty (60) days of receipt of the Offer and the closing of such purchase shall occur no later than ninety (90) days following the delivery of the Offer to the City. In such circumstances, the sale and transfer of the Property to the City shall be subject to all other provisions of these Restrictive Covenants, and the City shall be deemed to be a Qualified Purchaser. In the event that the City does not exercise its Right of First Refusal within the time periods set forth above, the City Transfer Certificate shall include a waiver of the City's Right of First Refusal. This Right of First Refusal shall be a continuing right that applies to each proposed transfer of the Property. This Right of First Refusal shall automatically terminate upon the expiration of the Option Term.

**7. Single Family Use and Leases.** The Owner covenants and agrees that the Property shall be used and occupied solely as an Owner occupied, single family residential dwelling. The Owner shall not lease, nor permit to be leased, the Property, except as expressly authorized by this Section 7.

**7.1 City Inspection** The City shall have the right to inspect the Property from time to time to insure compliance with these Restrictive Covenants.

**7.2 Obligation to Sell** If an Owner ceases to occupy the Property, the Owner agrees to give prompt written notice to the City that the Property is no longer Owner occupied and agrees to sell the Property to a Qualified Purchaser for the Resale Price. The Owner agrees to actively list and market the Property and agrees that the City and its agents shall be entitled to show the Property to prospective purchasers.

**7.3 Obligation to Rent to Qualified Renter** If an Owner ceases to occupy the Property, the Property may be occupied only by a Qualified Renter pursuant to a Qualified Lease for a Qualified Rent during the period of time that the Property is being marketed for resale to a Qualified Purchaser.

8. Lien Limitation The equity in the Property represented by the Adjusted City Subsidy shall not be mortgages or otherwise encumbered by the Owner. The Owner agrees that the aggregate liens on the Property shall not exceed the Lien Limitation. The Owner agrees that City shall have the right to review any proposed mortgage or other encumbrance on the Property and that no lien shall be placed on the Property unless the City delivers a City Transfer Certificate. The City may in the exercise of its sole discretion authorize a higher level of encumbrances on the Property in the City Transfer Certificate. Any lien amount waiver by the City shall apply only to the current level of indebtedness of the existing encumbrances and shall not apply to any new obligations, judgments or debts.

9. Enforcement of Covenants. Grantor, Grantee, and each Owner hereby acknowledge and agree that the covenants, conditions and restrictions set forth herein are imposed for the benefit of residential community of the City of Charleston, and that the City has interests in real property and social, cultural and economic interests that benefit from the imposition of these covenants and restrictions. The benefits of these covenants, conditions and restrictions run with the Property, and bind and burden the Property. These Restrictive Covenants shall be enforceable by the City. Grantor, Grantee and each Owner further acknowledge and agree that a breach of the covenants, conditions, and restrictions set forth herein shall potentially result in a broad range of economic, social, cultural and residential damages to a large number of parties, that such damages are difficult if not impossible to determine, and that the City shall be entitled to seek such remedies as may be available at law or in equity including but not limited to injunctive relief and specific performance. The City shall be entitled to reasonable attorney fees and costs in the event of a breach by the Owner of these Restrictive Covenants.

9.1 Default Option Price During the Option Term and as an additional remedy in the event of an Owner's breach of these Restrictive Covenants, the City shall have the right to purchase the Property for the Default Option Price from the current Owner:

(A) If a selling Owner sells the Property to a purchaser who is not a Qualified Purchaser or who is not deemed to be a Qualified Purchaser under the provisions of these Restrictive Covenants;

(B) If a selling Owner sells the Property for a purchase price in excess the Resale Price and the City has not agreed in writing to an increased purchase price pursuant to Section 5;

(C) if an Owner rents the Property to someone who is not a Qualified Renter, or for rent in excess of the Qualified Rent.

If the City purchases the Property pursuant to Section 9.1(A) or 9.1(B), the result will be that the current Owner is obligated to sell the Property to the City for a purchase price that is less than the price the current Owner paid for the Property. The City shall have no obligation to the current Owner or its mortgagee to provide legal assistance in

seeking redress against the selling Owner who participated in the breach of these Restrictive Covenants. Each purchaser and mortgagee is advised to request from a selling Owner a copy of the City's determination of the Resale Price for the transaction and a copy of the City's certification of the Qualified Purchaser.

10. Maintenance and Insurance Obligations The exterior appearance of the Property shall be maintained in an attractive and orderly condition and shall be kept free from trash, salvage, rubbish, garbage, and other unsightly or offensive material. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly. The Owner shall keep the Property insured against casualty, fire, and flood loss.

11. No Subdivision Without the prior express written consent of the City, the Property shall not be subdivided, nor converted to any form of horizontal property regime, nor any portion less than all the Property be conveyed, nor shall any form of interval ownership or time sharing of the Property be permitted.

12. Prevention of Heirs Property The Owner shall maintain a current will and will use reasonable efforts to prevent the Property from transferring upon the Owner's death pursuant to the laws of intestacy.

13. Payment of Ad Valorem Taxes The Owner shall promptly pay each year the ad valorem taxes on the Property and shall deliver a copy of the paid receipt for such taxes to the City within 30 days of payment. In order to protect the City's equitable interest in the Property, the City shall have the right to pay any delinquent taxes on the Property and shall a lien against the Property, which is separate and distinct from its lien for the Adjusted City Subsidy ("Tax Lien"). In addition to any other remedies provided by law or equity for the breach of these Restrictive Covenants, the City shall have the right to foreclose on its Tax Lien in the event that the Owner fails to reimburse the City within sixty (60) days of written notice from the City.

14. Duration and Amendment This Restrictive Covenants shall bind all persons claiming any interest in the Property and run with the land for a period of ninety (90) years from the date of recording, after which time these Restrictive Covenants shall be automatically extended for successive periods of ten (10) years unless amended as provided in this Section. These Restrictive Covenants may be amended only by a writing executed by both the Owner and the City, which is filed in the land records office of the County where the Property is located.

15. Severability. Whenever possible, each provision of these Restrictive Covenants shall be interpreted in such manner as to be effective and valid, but if the application of any provision of these Restrictive Covenants shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of these Restrictive Covenants are declared

to be severable. Notwithstanding anything contained herein to the contrary, if any of provision of these Restrictive Covenants shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until ninety (90) years from the date of first recordation.

**EXHIBIT B**

(Amendment to Morris Square MOU)

UPPER 1

December 5, 2005

Mr. Steve Bedard, CFO  
City of Charleston  
116 Meeting Street  
Charleston, SC 29401

Re: Ordinance #2005-448: Amendment to Memorandum of Understanding with Smith-Morris Company, LLC

Dear Mr. Bedard:

City Council ratified the above captioned ordinance at the September 27, 2005, meeting to authorize the Mayor to execute an Amendment to the Memorandum of Understanding between the City of Charleston and Smith-Morris Company, LLC for the Smith-Morris Project. Enclosed please find a copy of the following ordinance and a fully executed agreement for your records:

2005-448 An ordinance authorizing the Mayor to execute the necessary documents to enter into that certain Amendment to Memorandum of Understanding between the City of Charleston and Smith-Morris Company, LLC, said Amendment to Memorandum of Understanding being marked as Exhibit 1, attached hereto and incorporated by reference herein.

Along with a copy of this letter, I am returning one original agreement to Adelaide Andrews for distribution to the vendor.

Sincerely,

Vanessa Turner-Maybank, CMC  
Clerk of Council

VTM/tlw

Enclosure: As Stated

C: Mayor Joseph P. Riley, Jr. (w/o documents)  
Colleen Carducci (w/one copy of ordinance and one copy agreement)  
Geona Johnson (w/one copy of ordinance and one copy agreement)  
Adelaide Andrews (w/one copy of ordinance and one original agreement)





Resolution  
Number 2005-448

## A N O R D I N A N C E


AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON AND SMITH-MORRIS COMPANY, LLC, SAID AMENDMENT TO MEMORANDUM OF UNDERSTANDING BEING MARKED AS EXHIBIT I, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

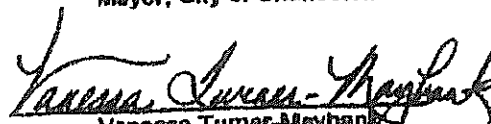
BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Amendment to Memorandum of Understanding between the City of Charleston and Smith-Morris Company, LLC, said Amendment to Memorandum of Understanding being marked as Exhibit I, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this 27<sup>th</sup> day of September in the year of Our Lord, 2005, in the 230th Year of the Independence of the United States of America.

  
\_\_\_\_\_  
Joseph P. Riley, Jr., Mayor  
Mayor, City of Charleston

  
\_\_\_\_\_  
Vanessa Turner-Maybank  
Clerk of Council

ATTEST:

EXHIBIT I

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF CHARLESTON        )     AMENDMENT TO  
  )     MEMORANDUM OF UNDERSTANDING

WHEREAS, the City of Charleston ("City") and Civitas, LLC entered into that certain Memorandum of Understanding dated May 20, 2003, as amended ("MOU") relating to the development of certain property known as Morris Square (the "Project"); and

WHEREAS, Smith-Morris Company, LLC ("Developer") has assumed the obligations of Civitas, LLC under the MOU; and

WHEREAS, the MOU required the Developer to include six (6) units of affordable housing in the Project, three (3) in Phase I and three (3) in Phase II (the "6 Units"); and

WHEREAS, the Developer had anticipated utilizing the Episcopal Diocese Community Housing Organization (the "EDCHDO") to build the six (6) affordable houses for the Developer; and

WHEREAS, the demand for market rate housing units at Morris Square has been high; and

WHEREAS, instead of providing six (6) units of affordable housing in the Project, the Developer has proposed that the six (6) units be sold at market rate and the net proceeds of sale be used to provide other affordable housing in the City and further that the Developer deed land for three (3) residential units in Phase II of the Project (the "3 EDCHDO Units") and provide architectural construction documents approved by the City's Board of Architectural Review (BAR) and all other necessary permits (excluding building permits) and approvals, including TRC approval, to the EDCHDO for the construction of the 3 EDCHDO Units; and

WHEREAS, it appears that more affordable housing could be provided in the City under this proposal than as set forth in the original MOU; and

WHEREAS, the City and Developer have agreed to amend the MOU as set forth herein.

NOW, THEREFORE, for and in consideration of the approval by the City of the Project, the promises of the Developer as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective January 1, 2006, Paragraph 1(a) of the MOU is deleted and the following substituted therefor: "(a) Residential and Mixed Use Development. Developer shall develop the City Land and the land acquired from third parties as set forth herein for the uses designated in the PUD and for constructing residential units as permitted by the PUD, including three (3) units which shall constitute affordable housing under those terms agreed to by the Developer and the City and generally described in Exhibit B attached hereto; provided that none of the 3 EDCHDO Units shall be located on either the 2,474 square feet of YMCA property purchased by the Developer in 2005 or the 13,200 square feet of YMCA property purchased by the Developer in 2003. Further, Developer shall contribute to the City the net proceeds from the sale of six (6) units in the Project, three (3) in Phase I and three (3) in Phase II, such funds to be

used by EDCHDO for affordable housing development in the City, including the 3 EDCHDO Units, it being the intention of the Developer to enhance the opportunity for affordable housing both in the Project and in other locations in the City for the benefit of low to moderate income first-time home buyers whose household incomes are less than one hundred twenty (120%) of the area median income as the same shall be established or modified by the Department of Housing and Urban Development. The Developer agrees to work with the EDCHDO during the design and permitting process of the 3 EDCHDO Units and to assist EDCHDO in obtaining construction drawings acceptable to the EDCHDO which shall be paid for by the Developer. Developer similarly agrees to cooperate in good faith to assist EDCHDO in selecting a construction contractor for the 3 EDCHDO units, including discussing the construction project with Developer's construction contractor if requested to do so by EDCHDO. In addition to all other Boards and Commissions which shall have jurisdiction over the proposed development of the 3 EDCHDO Units, the 3 EDCHDO Units shall be submitted to the City's BAR and TRC by the Developer for review and approval prior to construction. The 3 EDCHDO Units shall also be subject to the restrictive covenants more fully set forth in Exhibit "F" attached hereto and incorporated herein by reference, which restrictive covenants shall be recorded with the deeds of conveyance to the EDCHDO and which restrictive covenants shall run with the land.

2. Exhibit "B" to the MOU is deleted and Exhibit "B" attached hereto and incorporated herein by reference is substituted therefor.

3. The references in Exhibit "F" to three (3) affordable housing units in Phase I are deleted.

4. The MOU shall be further amended to add a new section 9(e) thereto, which shall provide that the MOU, as amended, including this amendment, shall be recorded in the RMC Office for Charleston County and the parties shall execute the necessary documents to effectuate this provision.

5. Except as amended herein, the MOU shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this  
2<sup>nd</sup> day of December, 2005.

WITNESSES:

Eir Davis  
Amanda [Signature]

SMITH-MORRIS COMPANY, LLC

By: [Signature]  
Its: Manager

WITNESSES:

Debra Matthews  
Jessica L. Wilder

CITY OF CHARLESTON

By: [Signature]  
Its: Mayor

## EXHIBIT "B"

### AFFORDABLE HOUSING

#### Developer Commitments:

1. The 6 Units in Morris Square which were originally designated as affordable housing will be sold by the Developer at market rates. The Net Proceeds (as defined below) from the sale of these units will be placed in escrow with the City as the closings thereon occur. These funds shall be used by EDCHDO, a City-qualified affordable housing non-profit organization, to build affordable housing units in the City of Charleston, including the 3 EDCHDO Units. The City shall release the funds to EDCHDO for affordable housing upon terms as agreed to between the City and EDCHDO.

2. The Developer has assisted the Charleston Housing Trust ("CHT") in obtaining approximately Four Hundred Thousand and no/100 (\$400,000.00) Dollars in federal grant money as a part of the 2005 federal budget process. Approximately one-half of those funds (\$196,800.00) shall be donated to the EDCHDO. Additionally, Developer is assisting CHT in applying for additional grant money in the 2006 federal budget and one-half of such funds received, if any, shall be donated to the EDCHDO and used by EDCHDO for affordable housing in the City, however, the total grant money donated to CHDO will not exceed Five Hundred Thousand and no/100 (\$500,000.00) Dollars. It is anticipated that the Net Proceeds from the sale of the 6 Units plus the grant money will enable more than six (6) affordable housing units to be constructed in the City of Charleston.

3. While market conditions may change and there can be no guaranty of the purchase price obtained for the 6 Units, it is anticipated that the Net Proceeds available for affordable housing will be approximately Nine Hundred Ninety Thousand and no/100 (\$990,000.00) Dollars. The Developer guarantees that the Net Proceeds from the sale of the 6 Units shall be at least Nine Hundred Thousand and no/100 (\$900,000.00) Dollars, such that if the Net Proceeds from the sale of the 6 Units are less than Nine Hundred Thousand and no/100 (\$900,000.00) Dollars, the Developer shall deposit with the City within thirty (30) days of the closing of the last of the 6 Units the difference between the Net Proceeds and Nine Hundred Thousand and no/100 (\$900,000.00) Dollars. Accordingly, the minimum amount of funds available for affordable housing shall be One Million Ninety-Six Thousand Eight Hundred and no/100 (\$1,096,800.00) Dollars (the minimum amount of grant money in the amount of One Hundred Ninety-Six Thousand Eight Hundred and no/100 (\$196,800.00) Dollars plus the Nine Hundred Thousand and no/100 (\$900,000.00) Dollar Developer guarantee).

4. The Developer shall deed land in Phase II to the EDCHDO sufficient in size and location as approved by the EDCHDO for the construction by the EDCHDO of the 3 EDCHDO Units. In addition to fee simple title to the land, the Developer shall provide BAR and TRC approved construction drawings and all other necessary permits and approvals (with the exception of building permits) to EDCHDO which the EDCHDO shall be able to use to construct the 3 EDCHDO Units.

5. "Net Proceeds" shall mean the gross sales price, less commissions and closing costs, and less hard construction costs (including construction interest and bank loan fees). All soft costs, including architectural, engineering and design fees and costs associated with obtaining BAR and TRC approval, shall be paid by the Developer and the Developer shall not be entitled to any credit or reimbursement therefor. The Net Proceeds will be placed in escrow with the City as each of the 6 units are sold.

6. It is the intention of the parties that the 3 EDCHDO Units in Phase II shall be completed by CHDO as soon as practical.

b.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: 11/10/16  
FROM: Colleen Carducci DEPT: BFRC  
ADDRESS: 2 George Street  
TMS: 4580101001

Action Request: Request authorization from the Mayor to execute the attached lease agreement between the City and the Gaillard Management Corporation.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Frank J. Cantucci</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	<u>Jimmy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	_____	<input checked="" type="checkbox"/>
<u>Manager</u>	<u>Michael Carducci</u>	<input checked="" type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☐ No ☐

If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: 11/10/16

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 2 George Street

TMS: 4580101001

ACTION REQUEST: Request authorization from the Mayor to execute the attached lease agreement between the City and the Gaillard Management Corporation.

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

### ACTION: What action is being taken on the Property mentioned?

☐ **ACQUISITION** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

☐ **FORECLOSURE**  
Terms: \_\_\_\_\_

☐ **PURCHASE**  
Terms: \_\_\_\_\_

☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_  
\_\_\_\_\_

☐ **SALE** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_  
\_\_\_\_\_

☐ **EASEMENT** Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

☐ **PERMANENT**  
Terms: \_\_\_\_\_  
\_\_\_\_\_



## COMMERCIAL REAL ESTATE FORM

☐

TEMPORARY

Terms: \_\_\_\_\_

☒

LEASE

Lessor: City of Charleston

Lessee:

Gaillard Management Corporation (GMC)

☒

INITIAL

GMC leases from the City of Charleston office space in Suite 2200 of the Gaillard Center located at 2 George Street. The initial term is for three years with two additional 1-year options. GMC agrees to fully reimburse the City for purchasing the furniture for the suite which will become property of the City upon termination of the lease. The furniture reimbursement will satisfy rent consideration for the initial three year term. Rent for option year 1 is \$1,500 per month and rent for option year 2 is \$1,750 per month.

Terms: \_\_\_\_\_

☐

RENEWAL

Terms: \_\_\_\_\_

☐

AMENDMENT

Terms: \_\_\_\_\_

☐

Improvement of Property

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: \_\_\_\_\_



Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).



Ratification  
Number \_\_\_\_\_

## A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A LEASE AGREEMENT WITH THE GAILLARD MANAGEMENT CORPORATION PERTAINING TO SUITE 2200 IN THE GAILLARD CENTER.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City a Lease Agreement with the Gaillard Management Corporation pertaining to Suite 2200 in the Gaillard Center, a copy of said Lease Agreement being attached hereto as Exhibit A and incorporated in this Ordinance by reference.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord, 2016, and in the \_\_\_\_ Year of the Independence of the United States of America

\_\_\_\_\_  
John J. Tecklenburg, Mayor

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF CHARLESTON     )     **LEASE AGREEMENT**

This Lease Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, between the **CITY OF CHARLESTON** (hereinafter referred to as “the City”), a municipal corporation organized and existing under the laws of the State of South Carolina and **THE GAILLARD MANAGEMENT CORPORATION** (hereinafter referred to as “GMC”).

WHEREAS, for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, the City hereby permits the use to GMC, and GMC accepts, subject to the terms herein set forth, office space (Suite 2200) on the second (2<sup>nd</sup>) floor of the Gaillard Center at 2 George Street, in the City and county of Charleston, State of South Carolina (hereinafter referred to as the “Leased Premises”), more fully shown on Exhibit A, attached hereto and incorporated by reference herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties agree as follows:

**1. SCOPE**

The City agrees to lease the Leased Premises to GMC for use only as office space in which to conduct its business affairs.

GMC shall have access to the common area restroom facilities located on the second floor in the Gaillard Center for its employees, customers and visitors.

**2. TERM**

The initial term of this Agreement shall be for a period of three (3) years and one week, commencing November 23<sup>rd</sup>, 2016, and terminating November 30<sup>th</sup>, 2019.

**3. OPTION TO RENEW**

Tenant shall have the option to renew the Lease upon the same terms and conditions as set forth herein for two additional 1-year terms provided all rents and obligations are kept current and Tenant is not in default of the lease. Tenant may exercise this option by delivery of notice in writing to Landlord at least ninety (90) days prior to the end of the initial term of the Lease or any renewal term. Landlord maintains the right to terminate this lease agreement at any point during the renewal period provided at least ninety (90) days written notice to Tenant.

**4. FURNITURE OBLIGATION**

Tenant shall furnish the Leased Premises with systems furniture including but not limited to, six workstations, one conference table, and associated chairs and file cabinets (hereinafter referred to as the “Furniture Plan”), more fully shown on Exhibit B, attached hereto and incorporated by reference herein. Tenant agrees all furniture included in the Furniture Plan will become the property of the Landlords upon termination of this agreement.

## 5. ADVANCED RENT

Landlord agrees that Tenant's Furniture Obligation will satisfy rent consideration for years one through three of the initial term therefore, as shown below on the Rental Rate schedule; no additional payment shall be due from GMC in years one through three.

## 6. RENTAL RATE

GMC shall pay the City the monthly rental in accordance with the below schedule for the use of the Leased Premises.

	<u>Monthly Rental</u>
Year 1	\$0
Year 2	\$0
Year 3	\$0
Option Year 1	\$1,500.00
Option Year 2	\$1,750.00

Said rental shall be payable monthly in advance to the office of the City at the following address: c/o City of Charleston, Real Estate Management, PO BOX 304, Charleston, SC 29402. Rent is due on the 1st day of each month and shall not be withheld for any reason whatsoever. In the event GMC shall fail to pay said rent, or any other amounts required to be paid by GMC under the terms of the Lease, on the due date or within ten (10) days thereafter, a late charge of ten percent (10%) of the amount due, compounded monthly, shall be added to the rental and paid to the City for each such late payment and the same shall be treated as additional rent.

## 7. UTILITIES

The City shall be responsible for payment of water and electricity expenses for the Leased Premises.

## 8. INSURANCE AND INDEMNIFICATION

GMC shall carry public liability insurance insuring its activities associated with its use of the Leased Premises during the entire term of the Lease Agreement, with minimum policy limits of not less than Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for injuries or death sustained by one person, Six Hundred Thousand and 00/100 Dollars (\$600,000.00) for injuries or death sustained in one occurrence and Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for property damage. The insurance policy shall be in the name of GMC and shall name the City of Charleston as an additional insured. GMC shall provide an acceptable certificate of insurance to the City concurrently with the execution of this Lease Agreement. The City reserves the right to increase the limits of such coverage, if necessary in the sole discretion of the City.

It is further agreed that GMC shall pay for any damage to the Leased Premises resulting either directly or indirectly from its, **guests, invitees, visitors, vendors or agents'** occupancy or use of the Leased Premises, excepting normal wear and tear thereto.

## 9. OBLIGATION

GMC agrees that it shall be solely responsible for any loss, damage, theft or destruction to its personal property within the Leased Premises and at no cost to the City. GMC acknowledges that the City will not insure GMC's office equipment or contents in the Leased Premises. City will insure the furniture listed on Exhibit B.

## **10. MAINTENANCE COSTS**

The City shall maintain the Leased Premises for the term of this Lease Agreement, including the roof, exterior walls, ceilings, floors, electrical, plumbing and mechanical equipment, and air conditioning and heating system.

GMC shall be responsible for normal daily cleaning of the Leased Premises. In addition, GMC shall be responsible for all office supplies and equipment necessary to conduct its business affairs at no cost to the City.

## **11. LEASED PREMISES EXPENSES**

GMC shall pay for all installation and service of telephone, cable, internet, computer lines and any monthly service charges associated therewith, which it may require at the Leased Premises for the term of this Lease Agreement at no cost to the City.

## **12. FACILITIES**

GMC agrees to accept the Leased Premises "as is" and to make no improvements, changes or alterations to the Leased Premises without the written consent from the City. Any improvements, changes or alterations to the Leased Premises so approved by the City shall be done by GMC at no cost to the City.

## **13. DEFAULT**

The City shall be deemed to be in default of this Lease Agreement if any of the terms or conditions hereunder are not met and the City fails to remedy such default within thirty (30) days of receipt of written notice from GMC. If said default is not remedied within thirty (30) days, GMC shall have the option to cancel this Lease Agreement at no cost to the City.

GMC shall be deemed to be in default of this Lease Agreement if any of the terms or conditions hereunder are not met and GMC fails to remedy such default within thirty (30) days of receipt of written notice from the City. If said default is not remedied within thirty (30) days, the City shall have the option to cancel this Lease Agreement and pursue damages or injunctive relief for breach of this Lease Agreement from GMC as may be available to it in law or in equity. The City shall also be entitled to payment of its attorney's fees and costs incurred by GMC should the City be the prevailing party in such action.

## **14. ENTIRE AGREEMENT**

This Lease Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof shall be changed orally, and no change or attempted waiver of any provision hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

## **15. GOVERNING LAW**

This Lease Agreement shall be controlled by the laws of the State of South Carolina.

**16. ASSIGNMENT**

GMC shall not have the right to sublet or assign this Lease Agreement or any right herein.

**17. RULES AND REGULATIONS**

The City reserves the right at any time to make further rules and regulations as in the City's judgment may be necessary for the safety, care, appearance, and cleanliness of the Leased Premises and the preservation of good order therein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

**18. DAMAGE OR DESTRUCTION**

If the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, City shall repair all such damage and restore the Leased Premises without expense to GMC, subject to delays due to adjustment of insurance claims, strikes and other causes beyond City's control. GMC hereby releases the City from liability for loss or damage occurring on or to the Leased Premises or to the content thereof, caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies and GMC waives all rights or recovery against the City for loss or damage. Willful misconduct lawfully attributable to GMC shall not be excused under the foregoing release and waiver. In the event 50% of the building is damaged or destroyed, the City may elect to terminate this lease with 30 days notice and with no further obligations to the GMC.

**19. NOTICES**

Notices and communication concerning this Lease Agreement shall be directed to the following party representatives:

City of Charleston

City of Charleston  
Director of Real Estate Management  
P.O. Box 304  
Charleston, SC 29402  
(843)724-7154

The GMC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, both parties have caused this Lease Agreement to be duly executed and delivered as of the date first above written. This Lease Agreement contains the entire agreement between the parties and shall only be modified by both parties in a signed written document.

**WITNESSES:**

**CITY OF CHARLESTON**

\_\_\_\_\_

**By:** \_\_\_\_\_  
John J. Tecklenburg

**Its: Mayor**

\_\_\_\_\_

**Date:** \_\_\_\_\_

**WITNESSES:**

**GAILLARD MANAGEMENT FOUNDATION**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

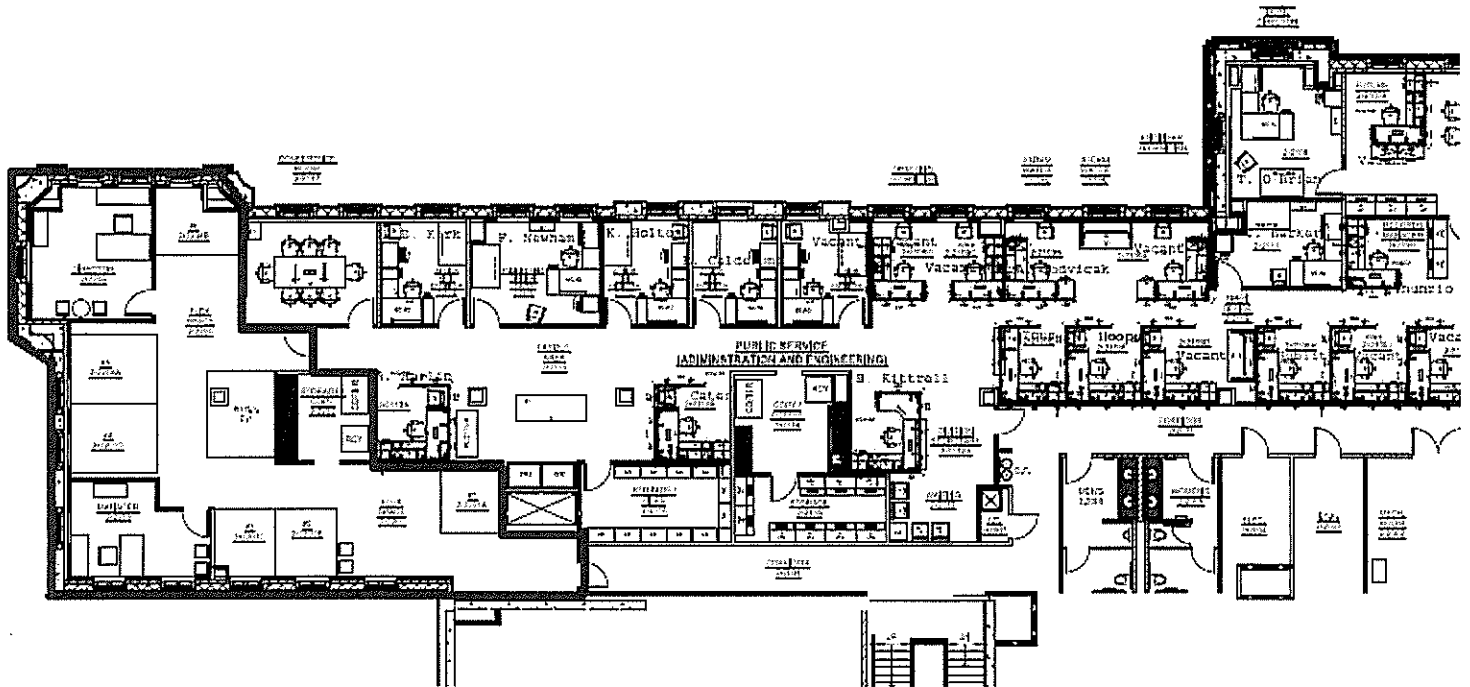
\_\_\_\_\_

**Date:** \_\_\_\_\_

## EXHIBIT A

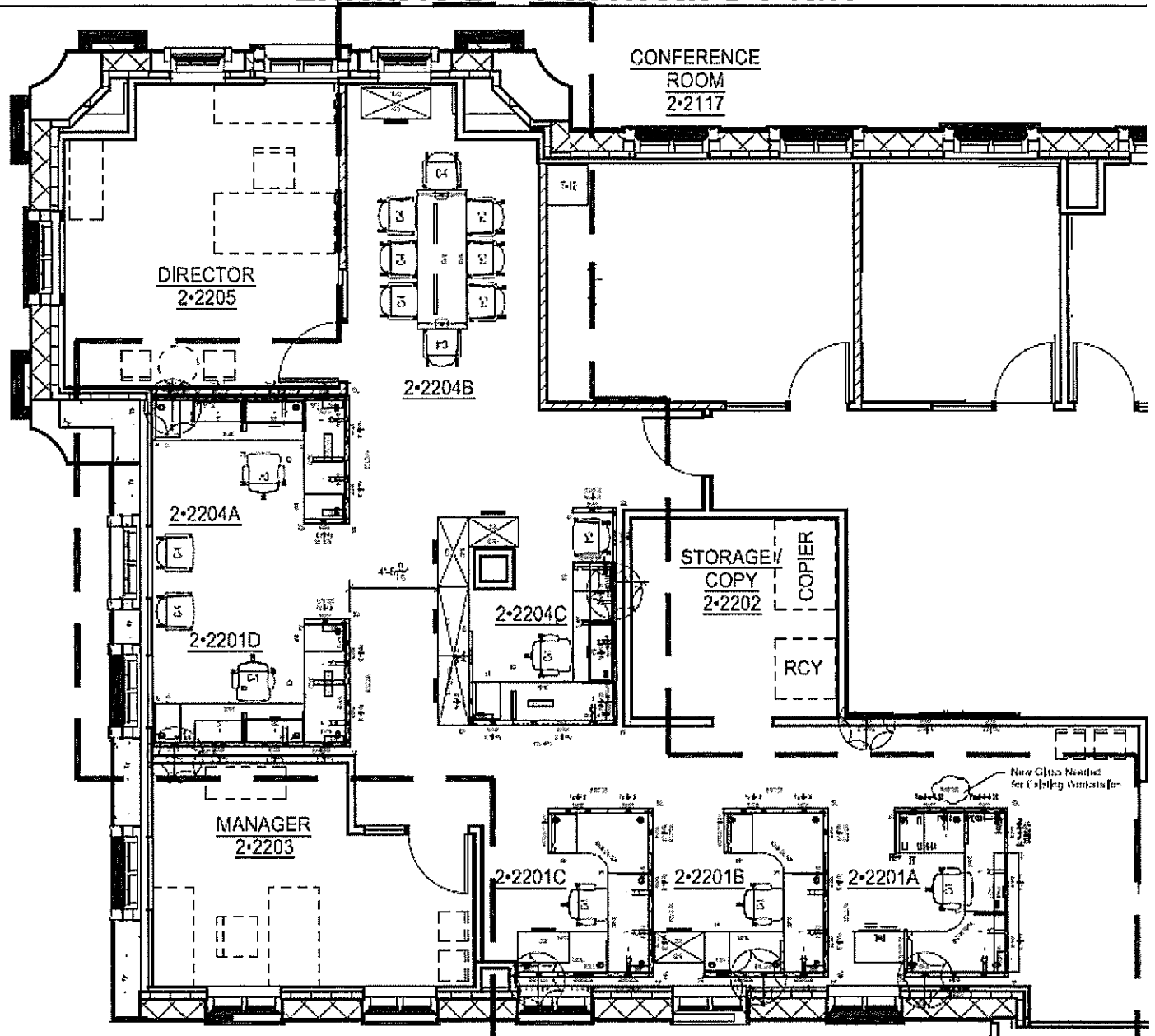
### DESCRIPTION OF LEASED PREMISES

Suite 2200 of the second floor of Gaillard Center  
(outlined in red on attached floor plan)





## Exhibit B - Furniture Plan



C)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: 11/10/16  
FROM: Colleen Carducci DEPT: BFRC  
ADDRESS: 196 Tradd Street  
TMS: 4570703001

Action Request: Request authorization of the Mayor to execute the attached license agreement between the City and the United States Coast Guard for the City's temporary use of their property.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head		<input type="checkbox"/>
Legal Department	<u>Francis P. Cantwell</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Imy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management		<input checked="" type="checkbox"/>
<u>Manager</u>	<u>Mark Carducci</u>	<input checked="" type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☐ No ☐

If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: 11/10/16

FROM: Colleen Carducci DEPT: BFRC

ADDRESS: 196 Tradd Street

TMS: 4570703001

ACTION REQUEST: Request authorization of the Mayor to execute the attached license agreement between the City and the United States Coast Guard for the City's temporary use of their property.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☐

### **ACTION: What action is being taken on the Property mentioned?**

<input type="checkbox"/>	<b>ACQUISITION</b>	Seller (Property Owner) _____	Purchaser _____
<input type="checkbox"/>	<b>DONATION/TRANSFER</b>	Donated By: _____	
<input type="checkbox"/>	<b>FORECLOSURE</b>	Terms: _____	
<input type="checkbox"/>	<b>PURCHASE</b>	Terms: _____	
<input type="checkbox"/>	<b>CONDEMNATION</b>	Terms: _____	
<input type="checkbox"/>	<b>OTHER</b>	Terms: _____	

<input type="checkbox"/>	<b>SALE</b>	Seller (Property Owner) _____	Purchaser _____
<input type="checkbox"/>	<b>NON-PROFIT ORG, please name</b>	_____	
	Terms:	_____	
<input type="checkbox"/>	<b>OTHER</b>	Terms: _____	

<input type="checkbox"/>	<b>EASEMENT</b>	Grantor (Property Owner) _____	Grantee _____
<input type="checkbox"/>	<b>PERMANENT</b>	Terms: _____	

## COMMERCIAL REAL ESTATE FORM

☐ **TEMPORARY**  
Terms: \_\_\_\_\_

☒ **LICENSE AGREEMENT**      Licensor: United States Coast Guard (USCG)      Licensee: City of Charleston

☒ **INITIAL**

The USCG grants to the City a license agreement for the temporary use of USCG property located at 196 Tradd Street beginning 11/01/16 and ending no later than 4/30/17. The City's Police Department will use the property to conduct emergency management staging activities which will include co-locating within the USCG facility and parking. There will be no rental fee charged to the City.

Terms: \_\_\_\_\_

☐ **RENEWAL**

Terms: \_\_\_\_\_

☐ **AMENDMENT**

Terms: \_\_\_\_\_

☐ **Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: \_\_\_\_\_

Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).

**REVOCABLE LICENSE FOR NON-FEDERAL USE OF REAL  
PROPERTY**

License No.  
HSCG82-17-6-0003

1. **Licensor:** The United States of America (Licensor), by the Commandant of the Coast Guard, acting under authority of 14 U.S.C. 93(a)(14), grants to the licensee, a revocable license affecting the real property described for the purposes shown, subject to all conditions, special and general, set forth.

2. **Licensee:**  
City of Charleston's Police Department

3. **Licensee Address:**  
180 Lockwood Blvd  
Charleston, SC 29403

4. **Contacts:** Paul Hewitt is the Real Property Contracting Officer (CO) and may be contacted at 15608 SW 117th Avenue, Miami, Florida 33177-1630, 305-278-6717, Paul.R.Hewitt@uscg.mil. A warranted Coast Guard CO is the only person authorized to execute this license or any subsequent changes to this license. The Contracting Officer's Technical Representatives (COTR) are ME1 Vickers and may be contacted @ 843-740-3905 or GMC Proctor who may be contacted @ 843-740-3145. Mr. Mark Wilbert is the Licensee Representative (Licensee) and may be contacted at 180 Lockwood Blvd, Charleston, @ 813-577-7434 or email wilbertm@charleston-sc.gov  
Licensee shall coordinate its use of the site with COTR

5. **Project Description/Purpose and Address:** Licensor will provide access to this site to Licensee's at USCG Base Charleston, located at 196 Tradd Street, Charleston, SC 29401, identified and depicted within Exhibit -A and outline within Exhibit -B, is attached hereto and made a part hereof. The purpose of this license is to provide the non-exclusive use by the City of Charleston Police Department, to conduct staging activities which will include, co-locating within the CG facility depicted within Exhibit-A which will include parking.

**6. Maximum Period Covered**

From	To
11/1/2016	4/30/2017

7. **Renewal Options and General Conditions:** This license may be renewed for one (1) term unless terminated by Licensor or Licensee as provided herein. All terms and conditions of the License, as renewed and as amended in writing from time to time, shall remain in full force and effect and shall apply during all renewed terms. Upon revocation, expiration, or surrender of this license, the Licensee shall, to the extent directed by the Licensor, remove all alterations, additions, betterments, or improvements made or installed, and restore the Premises, subject to reasonable wear and tear, to the same or in as good a condition as existed on the effective date of this license.

8. **Rental:** Except as otherwise provided, the Licensee shall be charged a \$0 fee, for the use of this Premises. Payments shall be sent to: U.S. Coast Guard ART, PO Box 70969, Charlotte, NC 28272-0969, to include the License Number as shown above. The use of the Premises shall be without cost or expense to Licensor. **Expenses:** Unless otherwise agreed to in writing by the parties, any cost, expense or liability connected with or in any manner incident to the granting, exercise, enjoyment or relinquishment of this license shall be assumed and discharged by the Licensee.

9. **By the acceptance of this license, Licensee agrees to abide by and be bound for itself, its officers, employees, contractors, agents, guests and participants by the following General and any Special Conditions and Exhibits attached herewith:**

United States Coast Guard	Licensee
Date:	Date Accepted:
By (Signature)	By (Signature)
Name	Name
Title      Real Property Contracting Officer	Title

If Licensee is other than an individual, the following must also be signed

I certify that I am an officer or managing member of the entity named in Paragraph 2; that the person who signed this license on behalf of the Licensee was duly authorized by the Licensee's governing body to sign on behalf of the Licensee.

Date:  
By (Signature)

Name  
Title

## GENERAL AND SPECIAL CONDITIONS

1. **Access.** The use, operation, and occupation of the Premises are subject to the general supervision and control of the Licensor's Installation Commander or his duly authorized representative. In accepting the rights, privileges, and obligations established hereunder, Licensee recognizes that the Installation that Licensor will not permit the Licensee to interfere with the Installation's military mission. Access to the Installation is subject to the control of the Installation's Commanding Officer and is governed by such regulations and orders as have been lawfully promulgated or approved by the Secretary of Homeland Security, the Commandant of the Coast Guard or by any designated military Commander or representative. Any access granted to Licensee, its officers, employees, contractors of any tier, agents, and invitees is subject to such regulations and orders. This License is subject to all regulations and orders currently promulgated or which may be promulgated by lawful authority, as well as all other conditions contained in this License. Violation of any such regulations, orders, or conditions may result in the termination of this License. Such regulations and orders may, by way of example and not by way of limitations, include restrictions on who may enter, how many may enter at any one time, when they may enter, and what areas of the Installation they may visit, as well as requirements for background investigations, including those for security clearances of those persons entering. Licensee is responsible for the actions of its officers, employees, contractors, of any tier, agents, and invitees while on the Installation and acting under this License. In the event all or any portion of the Premises shall be needed by the United States or in the event the presence of Licensee's property shall be considered detrimental to governmental activities, Licensee shall, at Licensee's expense, upon written notice to do so, and as often as so notified, remove or relocate its property to such other acceptable location or locations on the Premises, as may be designated by said Licensor. In the event Licensee's property shall not be removed or relocated within thirty (30) days after any aforesaid written notice, the Licensor may cause the same to be done at the expense of the Licensee.

2. **Condition of Premises.** Licensee has inspected the Premises. The Premises are granted in an "as is, where is" condition without any warranty, representation, or obligation on the part of Licensor to make any alterations, repairs, or corrections to defects whether patent or latent.

3. **Historic Preservation.** Licensee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such times are discovered on the Premises, Licensee shall cease its activities at the site and immediately notify said Licensor and protect the site and the material from further disturbance until said Licensor gives clearance to proceed. Any costs resulting from this delay shall be the responsibility of Licensee.

4. **Protection of Premises.** Licensor shall require Licensee, at all times, to protect, repair, and maintain the Premises in good order and condition at its own expense and without costs or expense to Licensor. Licensee shall exercise due diligence in protecting the Premises against damage or destruction by fire, vandalism, theft, weather, environmental contamination or other causes related to Licensee's activities. Any property on the Premises damaged or destroyed by Licensee incident to the exercise of the rights and privileges herein granted shall be promptly repaired or replaced by Licensee to the satisfaction of said Licensor.

5. **Environmental Compliance.** In its activities under this License, Licensee shall comply with all applicable environmental requirements, and in particular those requirements concerning the protection and

enhancement of environmental quality, pollution control and abatement, safe drinking water, and solid and hazardous waste. Responsibility for compliance with such requirements rests exclusively with Licensee, including liability for any fines, penalties, or other similar enforcement costs.

6. **Architectural Barriers Act Responsibilities.** The Licensee hereby accepts any and all responsibilities the Licensor may have under any applicable laws regarding accessibility of licensed Premises.

7. **Alteration of Premises.** No additions to or alterations of the Premises shall be made without the prior written approval of said Licensor.

8. **Coast Guard Property.** Any interference with the use of or damage to any real or personal property under control of the Coast Guard, incident to this exercise of the rights and privileges herein granted shall be promptly corrected by Licensee to the satisfaction of said Licensor. If Licensee fails to promptly repair or replace any such property after being notified in writing to do so by said Licensor, said Licensor may repair or replace such property and Licensee shall be liable for the costs of such repair or replacement.

9. **Termination.** This License may be terminated at will by the Licensor and such termination shall not create any liability on the part of the Licensor for Licensee's costs, anticipated profits or fees, and costs of construction, installation, maintenance, upgrade, and removal of facilities. Any other costs, profits, or fees, and any such costs and anticipated profits or fees will not be recoverable from Licensor. Unless otherwise agreed in writing by the Parties, the Licensee agrees to fully restore the Premises to its original condition prior to the License, within 30 days of termination, and the obligations of Licensee, including those regarding remediation of environmental damage and removal of any structures, facilities, and equipment installed by Licensee, shall remain in effect after the termination of this License, until restoration has been completed to the satisfaction of the Licensor.

10. **Restoration of Premises.** On or before the date of expiration of this License or its termination by the Licensor, Licensee shall vacate the Premises, remove its property therefrom, and restore the Premises to its original condition without expense to the Licensor. Such restoration shall include, if applicable, removal of contamination caused by Licensee.

11. **Costs of Services.** The Licensee's use of the Premises and its property on the Premises requires Licensee to be responsible for all costs, including but not limited to, utilities, janitorial services, building maintenance, and ground maintenance, and snow removal for the Premises without cost to the Coast Guard. The Coast Guard may consent to provide certain services to Licensee on a reimbursable basis. Reimbursable costs are listed, charged, and billed as outlined herewith.

12. **Safety and Hazardous Waste Disposal.** Licensee, at its expense, shall comply with all applicable laws on occupational safety and health, the handling and storage of hazardous materials, and the proper handling and disposal of hazardous wastes and hazardous substances generated by its activities. Responsibility for the costs of proper handling and disposal of hazardous wastes and hazardous substances discovered on the Premises is governed by applicable law. The terms hazardous materials, hazardous wastes, and hazardous substances are as defined in the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act and their implementing regulations, as they have been or may be amended from time to time.

13. **Transfer, Assignment, Leasing or Disposal.** Licensee shall not

transfer, permit, license, assign, lease, or dispose of in any way, including, but not limited to, voluntary or involuntary sale, merger, consolidation, receivership, or other means, this License or any interest therein or any property on the Premises, or otherwise create any interest therein.

**14. Liens and Mortgages.** Licensee shall not engage in any financing or other transaction creating any mortgage upon the Premises, place or suffer to be placed upon the Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Licensee's interest in the Premises under this License. On the date of the execution or filing of record of any such mortgage, encumbrance, or lien, regardless of whether or when it is foreclosed or otherwise enforced, this License shall terminate without further action by Licensors.

**15. Other Grants of Access.** This License is subject to all outstanding easements, rights-of-way, leases, permits, licenses, and uses for any purpose with respect to the Premises. Licensors shall have the right to grant additional easements, rights-of-way, leases, permits, and licenses, and make additional uses with respect to the Premises without regard to this License.

**16. Compliance with Laws.** Licensee shall comply with all applicable Federal, state, interstate, and local laws, regulations, and requirements. This may include the need for Licensee to obtain permits to engage in its activity. Licensors are not responsible for obtaining permits for Licensee.

**17. Disputes.** Except as otherwise provided for in this license, any dispute concerning a question of fact arising under this license which is not disposed of by agreement shall be decided by the Installation Commander who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Licensee. The decision of the Installation Commander shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Licensee mails or otherwise furnishes to the Installation Commander a written appeal. The decision of the Installation Commander or his authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this license as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged provided, however, that such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Licensee will proceed diligently with the performance of the license and in accordance with the decision of the Installation Commander. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in these paragraphs. Nothing in this license, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.

**18. Solicitations:** Licensee, its officers, employees, contractors, agents and guests, and the participants in its activities may not engage in any activities while on the installation that involve the solicitation of funds for private or commercial interests, including fund raising for nonprofit organizations and causes.

**19. Availability of Funds.** The obligations of Licensors under this License shall be subject to the availability of appropriated funds. No appropriated funds are obligated by this License.

**20. Amendments.** This License may only be modified or amended by the written agreement of the Parties, duly signed by their authorized representatives.

**21. Liability.** Licensors shall not be responsible for damage to

property or injuries to persons which may arise from or be attributable or incident to, the condition or state of repair of the Premises, due to its use and occupation by Licensee. Licensee agrees that it assumes all risks of loss or damage to property and injury or death to persons, whether to its officers, employees, contractors or any tier, agents, invitees, or others by reason of or incident to Licensee's use of the Premises, and its activities conducted under this License. Licensee shall, at its expense, pay any settlements of or judgments on claims arising out of its use of the Premises. Liabilities, claims, and charges of whatever kind or nature that may arise as a result of the activities of Licensee, whether tortious, contractual, or other, except to the extent such claim or charges is cognizable under the Federal Tort Claims Act.

**22. Insurance.** During the entire period this License shall be in effect, the Licensee, at no expense to the Licensors, shall carry and maintain and require its contractors of any tier performing work on the Premises to carry and maintain the following insurances and provide a copy of the effective certificate of insurance to Licensors:

**22.1.** Licensee acknowledges that it shall be responsible for any and any claims, damages, costs, and expenses, including reasonable attorney's fees, arising from its use of the Premises in accordance with and to the extent provided in the SC Tort Claims Act, as amended.

**22.2.** If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

**22.3.** All policies of insurance which this License requires Licensee to carry and maintain or cause to be carried or maintained pursuant to this Section shall be affected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this License, issued by insurers of recognized responsibility. No cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by Licensors of written notice thereof; provide that the insurer shall have no right of subrogation against Licensors; and be reasonably satisfactory to Licensors in all other respects. In no circumstances will Licensee be entitled to assign to any third party rights of action which Licensee may have against Licensors. The foregoing notwithstanding, any cancellation of insurance coverage based on nonpayment of the premium shall be effective after fifteen (15) days written notice to Licensors. Licensee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by Licensee under this Section will constitute a failure to comply with the terms of the License. Licensee shall deliver or cause to be delivered upon execution of this License, and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this paragraph, to Licensors a certificate of insurance evidencing the insurance required by this License.

**23. Nondiscrimination.** The licensee agrees that no person will be discriminated against in connection with the use made by the licensee of the property on the grounds of race, color or national origin, nor will any person be denied the benefits of or be subjected to discrimination under any program or activity held, conducted or sponsored by the licensee in that any activity, program or use made of the property by the licensee will be in compliance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 238, 252; 42 U.S.C. 2000d) and the applicable regulations of GSA (41 CFR Subpart 101-6.2). The licensee will obtain from each person or firm, who through contractual or other arrangements with the licensee, provides services, benefits or performs work on the property, a written agreement whereby the person or firm agrees to assume the same obligations with respect to nondiscrimination as those imposed upon the licensee by law and will furnish a copy of such agreement to the licensors. The breach by the licensee of conditions relating to nondiscrimination shall constitute

sufficient cause for cancellation and revocation of the license.

**24. Interference.** The equipment, property, or fixtures installed and operated by Licensee pursuant to this License shall not in any way interfere with: (1) operation and equipment under the control of the Licensor, (2) navigational aids or equipment, or (3) property authorized, installed, and operated equipment of others in the vicinity. The equipment, property, or fixtures installed and operated by Licensee pursuant to this License shall not in any way pose any hazard to life, health, or safety. Licensee shall at no time permit or allow: (1) any interference with the Licensor's operations or access rights, (2) access to any Licensor equipment or facilities, including but not limited to, aids to navigation or radiobeacons, (3) the removal of any Licensor property from the site, (4) any activities while on the installation that involve the solicitation of funds for private or commercial interests, including fund raising for nonprofit organizations and causes, and (5) any controlled substances to be brought onto, possessed, used, solicited, transferred, or sold on the installation, nor any alcoholic beverages to be brought on to the installation.

**25. Notices.** All correspondence to be sent and notices to be given pursuant to this License shall be addressed, as set forth in section 4, and in writing, or as may from time to time otherwise be directed by the Parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, deposited, postage prepaid, and postmarked in a post office regularly maintained by the United States Postal Service.

**26. Entire Agreement.** It is expressly understood and agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Premises by the Licensee, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein.

**27. Section and Paragraph Headings.** The headings contained in this License, its Attachments, and Exhibits are to facilitate reference only and shall not in any way affect the construction or interpretation hereof.